



Ross J. Lieberman
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American Cable Association
2415 39th Place, NW
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January 13, 2017

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte* Filing, Further Notice of Proposed Rulemaking, WC Docket No. 10-90

Dear Ms. Dortch:

The American Cable Association (“ACA”) writes to address the issue of “Access to Appropriate Phase II Levels for All States,” which was raised in the Further Notice of Proposed Rulemaking (“FNPRM”) released on May 26, 2016 in the above-referenced proceeding,¹ and to urge the Commission to quickly approve New York’s Petition for Expedited Waiver (“Petition”),² which is currently pending, also in the above-referenced proceeding.

I. State Coordination

In the FNPRM, the Commission “recognize[s] and applaud[s] state initiatives to advance broadband deployment and access to unserved and underserved consumers” and seeks comment on ways to coordinate with state initiatives to achieve the Commission’s universal service goals in the Connect America Fund (“CAF”) Phase II program.³ We agree that coordinating Phase II and state broadband deployment programs has the potential to bring higher-performance and less expensive broadband service sooner to unserved areas, but only where requesting states can demonstrate that their programs are consistent with Phase II processes and standards and exceed the Phase II public interest requirements. Specifically, for coordination to be successful, a requesting state must confirm that its program meets a series of threshold requirements, all of which are needed so the Phase II program is not undermined:

- Support must be limited to unserved areas eligible under Phase II,

¹ *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 16-64 (rel. May 26, 2016). *See id.*, ¶¶ 217-224, wherein the Commission seeks comment on ensuring an “equitable distribution among states” and proposes alternative policies to achieve this objective.

² New York State Petition for Expedited Waiver, WC Docket No. 10-90 *et al.* (filed October 12, 2016).

³ FNPRM, ¶ 218.

- Public interest standards must meet those adopted for Phase II,
- Support must be awarded by a competitive bidding mechanism, which maximizes participation by providers, including by smaller, experienced broadband providers that may not have previously participated in broadband deployment programs, and
- Accountability measures, including reporting and audits, must meet those adopted for Phase II.

However, we believe just meeting the requirements of the Phase II program is not a sufficient basis for the Commission to undertake coordination of its program with a state initiative. There is a cost to coordination, not only in terms of additional time and resources spent by the Commission, but in terms of potential risk for the Commission should the state program incur problems. Thus, so that there is a sufficiently favorable benefit-cost calculation, more should and must be expected from states seeking to coordinate their initiatives with the Phase II program.

We propose the following:

- First, a state seeking to coordinate must demonstrate that its initiatives require a recipient of support to provide broadband service with performance characteristics (*e.g.* speed and latency) that substantially exceed the baseline performance requirements in Phase II.
- Second, the state must require a recipient to deploy a network with coverage to all required locations that meets the requisite performance characteristics substantially faster than the timing required in Phase II. We recommend 100 percent completion by the end of the third year.
- Third, the state initiative must utilize a competitive bidding process that grants sufficient, but not excessive funding to providers to meet the enhanced performance and expedited deployment obligations.
- Fourth, to give the state a meaningful stake in ensuring the program is successful, the state should match Phase II funding in two respects. First, the state should make available an amount equal to, or greater than the aggregate amount that the Phase II competitive bidding process makes available for the state's unserved areas -- as calculated by Connect America Model reserve price. Second, the state's contribution to providers should at least match the amount of Phase II funding that is contributed by the Commission.
- Fifth, a state seeking to coordinate its initiative with Phase II support must seek and obtain approval from the Commission, and the Commission should have a notice and comment process for reviewing such requests, including input from the public, to determine whether the initiative meets the requirements and is in the public interest.

The Commission also may consider adopting "additional" requirements to ensure enhanced Phase II objectives are achieved.

We recognize that the Commission has raised other issues in the FNPRM. However, given that the state coordination issue goes to the core of how CAF funding will be allocated and

distributed under the Phase II program, we believe there is value in issuing a public notice expeditiously to request comment on our proposal and related issues regarding whether and how to coordinate a state program with Phase II.

II. New York Waiver Petition

In the meantime, while the Commission works on developing standards and processes for coordination with state initiatives, we recommend that it act now to approve the Petition for Expedited Waiver filed by New York State through Empire State Development. The New NY Broadband Program is an ambitious \$500 million program to bring high-performance broadband service to unserved areas in that state. It awards support only in unserved areas eligible for Phase II funding through a reverse auction process.

In the Petition, New York has requested that the Commission waive its rules to allow CAF funding to be allocated to New York carriers in coordination with the State's ongoing reverse auction process. In support of its request, New York has committed to limit use of federal CAF support to at most the Phase II reserve price and to match Phase II support with state funds. New York has also committed to fund only those broadband networks that greatly exceed the minimum performance requirements mandated under the CAF rules and that can be completed on an expedited buildout schedule. New York has also committed that any recipient of Phase II support would meet any accountability measures adopted by the Commission. Importantly, New York State has sought approval to coordinate through the waiver process, which has provided ample opportunity for the public to weigh in on the State's waiver request.⁴

ACA previously raised certain concerns with the Petition, including that the issues raised by the State might be better addressed in the confines of the FCC's pending CAF proceeding.⁵ Based on subsequent discussions ACA has held with New York broadband officials, ACA better appreciates the timing and funding challenges presented by the overlapping New York and CAF auction processes. In light of these facts and given that the New York program should satisfy, or be close enough to the standards that the Commission should adopt for coordinating with state initiatives as recommended above, we support rapid grant of the requested waiver. As New York recently noted, grant of the waiver would facilitate a partnership between the FCC and the State that would enable the deployment of broadband networks that are better, faster, and cheaper than those available under the CAF program alone.⁶

⁴ See Public Notice, Wireline Competition Bureau Announces Deadlines for Filing Comments and Replies Regarding New York State's Petition for Expedited Waiver of the Connect America Phase II Auction Rules, DA 16-1180 (rel. Oct. 13, 2016).

⁵ See American Cable Association Reply Comments on New York State Petition for Expedited Waiver (filed Oct. 31, 2016). The instant filing is intended to supplement ACA's Reply Comments in this proceeding.

⁶ See *Ex Parte* Letter from John M. Beahn, Counsel to Empire State Development, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 et al. (Jan. 10, 2017).

We request that this letter, which is being filed electronically, be placed in the file of the above-captioned proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read "Ross J. Lieberman". The signature is fluid and cursive, with a large initial "R" and a distinct "J" and "L".

Ross J. Lieberman

cc: Lisa Hone
Nicholas Degani
Amy Bender
Claude Aiken
Carol Matthey